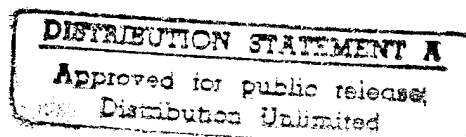
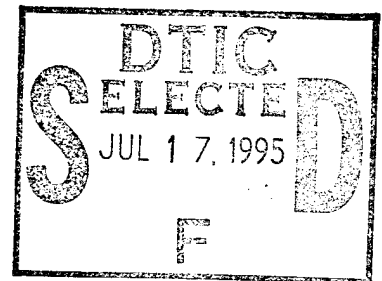


December 1994

SUPERFUND

Legal Expenses for
Cleanup-Related
Activities of Major U.S.
Corporations

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United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-259009

December 23, 1994

Congressional Requesters

Under the Environmental Protection Agency's (EPA) Superfund program, the parties responsible for hazardous waste sites that are contaminating the environment are liable for the costs of cleaning up the sites. Responsible parties can include generators of hazardous waste deposited at the sites, transporters of the waste, and site owners and operators. In addition to paying for cleanup expenses, responsible parties also incur legal costs to allocate the cleanup expenses among themselves, to settle with the government, or to litigate liability for cleanups. Responsible parties have complained that the costs of these activities—called transaction costs—are high and represent too large a portion of their total Superfund expenditures. However, limited data have been collected on these transaction costs.

To help fill this gap, you asked us to survey the Fortune 500 Industrial and Fortune 500 Service corporations¹ to determine how much responsible parties have spent for cleanup and legal costs at Superfund sites and to identify the factors that these parties believe have increased and decreased their legal costs. Approximately two-thirds of these 1,000 corporations responded to our survey, and about half of the respondents said that they had been involved at Superfund sites. (See app. I for a detailed discussion of our objectives, scope, and methodology.)

Results in Brief

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The corporations that responded to our survey and said that they had been involved at Superfund sites reported having spent, since January 1, 1987, a median of \$1.5 million in cleanup and legal expenses for all of the sites at which they had been involved.² On average, they had been involved at 17 sites. They reported spending approximately two-thirds of this total (\$1 million) for site cleanups and one-third (\$500,000) for legal expenses. As a rule, corporations that spent more for cleanup at a site also spent more for legal costs; however, parties responsible for minor shares of cleanup costs generally incurred a higher proportion of legal costs than parties responsible for major shares. The amounts spent by individual

¹Fortune 500 is The Time Inc. Magazine Company's trademark name for rankings of the largest U.S. corporations.

²Many of the numbers reported are based on a median statistic. The median is the midpoint in a range of numbers. App. I explains the use of the median for reporting the results of questions that use ranges of numbers in the response categories. See app. IV for the wording of questions and responses.

corporations for both cleanup and legal costs varied widely, as did the number of sites at which each corporation was involved.

Factors that drive up legal costs can be divided into those related to corporate activities and those related to the sites themselves. The corporations identified several activities as primarily responsible for increasing their legal costs. For example, they cited allocating the costs of cleanups among responsible parties and negotiating with EPA over responsibility for cleaning up a site or over the remedy selected for cleanup. Among the site-related factors that increased their legal costs, they cited EPA's not identifying and enforcing the cleanup obligations of all potentially responsible parties and a lack of good data on the waste contributions of parties—data that would facilitate settlements. When responsible parties against which EPA has taken action believe that EPA has not fully identified other parties or has selectively enforced cleanup obligations, these parties often pursue the other parties for a contribution to the cleanup costs. EPA officials believe that the agency is reasonably complete in its identification of responsible parties and takes appropriate enforcement action.

According to respondents, factors that decrease their legal costs include having good data on the sources of hazardous waste, forming a group with other potentially responsible parties to negotiate their respective cleanup responsibilities with one another and with EPA, and EPA's identifying all potentially responsible parties and bringing enforcement action when necessary. Thirty-two percent of the respondents that had used alternative dispute resolution techniques, such as mediation, at high-cost sites identified these techniques as an important factor in keeping legal costs low.

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) created the Superfund program to clean up the nation's most dangerous hazardous waste sites. Under the system of liability established in CERCLA, EPA has had considerable success in enforcing the cleanup responsibilities of potentially responsible parties (PRP) at Superfund sites. However, the transaction costs incurred in reaching settlements under this system can be high. These costs can include legal expenses incurred in connection with negotiation or litigation with EPA, other PRPs, or insurance companies. Transaction costs at some sites are compounded by lawsuits (referred to as third-party suits) brought by PRPs against other parties that the PRPs believe contributed to

the site's contamination and should help pay for the cleanup. (App. II discusses transaction costs in more detail.)

In 1994, the Congress considered but did not enact a bill to reauthorize the Superfund program. This bill would have made a number of changes to the program to reduce participants' legal expenses. For example, it would have created new administrative procedures to help parties allocate cleanup costs, exempted some parties from liability or limited their liability, created a settlement fund to reduce litigation between parties and their insurers, and given parties an opportunity to supplement the list of responsible parties identified by EPA. The Congress is expected to reconsider the Superfund program's reauthorization next year.

We surveyed all of the Fortune 500 Industrial and Fortune 500 Service corporations listed in the 1993 Fortune 500 directory to determine the costs they had incurred for cleaning up hazardous wastes at Superfund sites. Slightly over half (367) of the 666 corporations that responded to our survey said that they had been involved at Superfund sites as PRPS since January 1, 1987.³ Our questionnaire, which is divided into two parts, asked the corporations for information about their costs for all Superfund sites and for up to three sites where their legal expenses were at least \$50,000. Corporations provided information on 570 such sites.

We also asked each corporation to categorize its level of involvement at sites. The categories included (1) de minimis party, that is, responsible for no more than minor contamination at any site (a de minimis party is eligible for a special expedited settlement with EPA); (2) minor player, that is, more involved than a de minimis party but not responsible for a large share of the cleanup; and (3) major player, that is, responsible for a large share of the cleanup. Respondents were asked to indicate the number of sites at which they were involved as a party in each category. For some analyses, we classified respondents by the highest level of their involvement at any of their sites.

In addition, we asked the corporations to identify factors that they felt increased or decreased their legal costs. We asked about the (1) types of corporate legal activities and (2) factors at the site that raised or lowered legal expenses. (App. III contains information on sites where corporations incurred legal costs of at least \$50,000. Our questionnaire is reproduced in app. IV.)

³This was the start of the first year following the enactment of the Superfund Amendments and Reauthorization Act of 1986, which put the program into its current form.

We surveyed the Fortune 500 corporations because EPA does not maintain a complete list of all parties that may have incurred legal expenses at Superfund sites. Our survey does not reflect the experience of small and medium-sized companies or of local governments. It does, however, reflect the experience of major U.S. businesses in a variety of industrial and service categories.

Legal Costs Vary Widely Depending on Exposure to Liability for Cleanup

Of the 666 corporations responding to the survey, 367 reported having incurred costs related to the cleanup of Superfund sites since January 1, 1987. Although data on the amount of spending varied considerably, corporations reported spending a median of about one-third of their Superfund costs on legal expenses. Legal costs were often incurred at multiple sites and for suits involving third parties and insurers.

Overall Legal Costs Average 33 Percent of Total Site Costs

The corporations reported having spent a median amount of about \$1.5 million—\$1 million for cleanup and \$500,000 for legal expenses—at all of their sites combined, but their responses varied widely. Eighty-one corporations (23 percent) reported spending \$100,000 or less on cleanup costs, and 38 corporations (11 percent) reported spending over \$20 million.

The amounts spent on legal activities also varied widely and appeared to be related to the corporations' liability for cleaning up the sites. The data indicated that although expenditures for legal costs increase with the level of corporate responsibility for cleanups, they do not increase as rapidly as expenditures for cleanups. As figure 1 shows, the percentage of respondents' total costs represented by legal costs is inversely related to the amounts spent on cleanups. Thus, as cleanup costs mount—when, for example, sites move from the study phase to the construction phase—legal costs represent a declining proportion of the total amounts spent.

Figure 1: Relationship of Legal Costs to Cleanup Costs

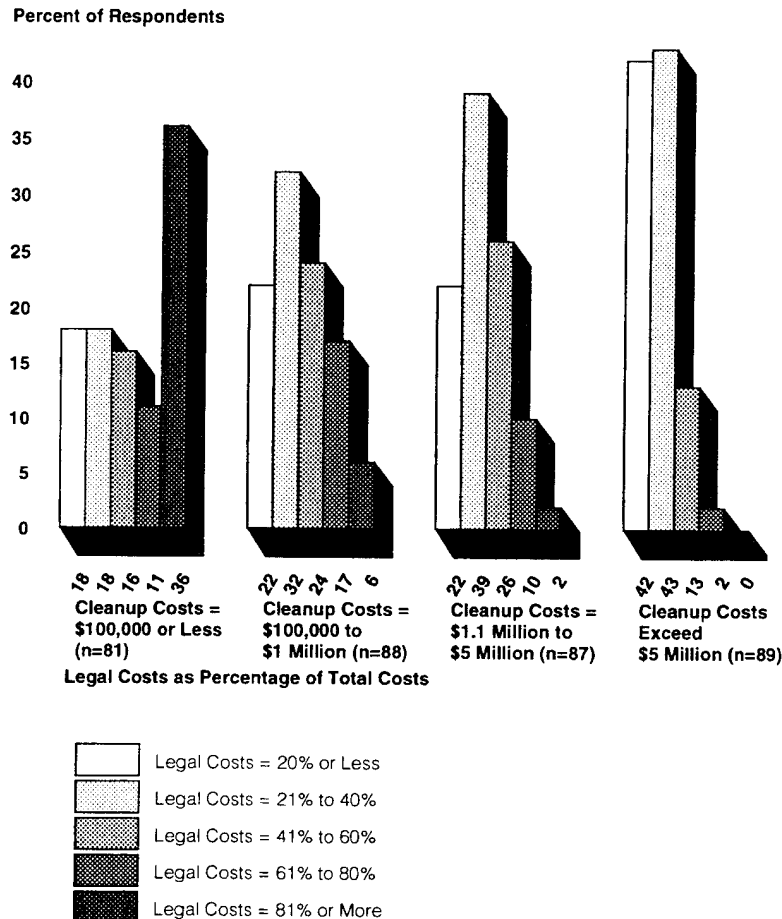


Table 1 presents data on the legal expenses of corporations classified by the highest level of their involvement at sites. The table shows that corporations whose highest level of involvement at any site was as a de minimis party reported median total legal costs of about \$32,000; corporations reporting that they were major players at three or more sites reported median legal costs of almost \$3.5 million. However, these major players' costs represented declining percentages of total costs because the amounts spent by corporations on site cleanups increased rapidly as their level of involvement increased.

Table 1: Median Legal Cost by Level of Corporate Involvement

| Level of involvement | Percent of respondents | Amount ^a | Median percent ^b |
|-----------------------------------|------------------------|---------------------|-----------------------------|
| De minimis only | 19 | \$ 31,800 | 46 |
| Minor involvement | 19 | 240,700 | 38 |
| Major player with 1 or 2 sites | 27 | 481,500 | 34 |
| Major player with 3 or more sites | 35 | 3,465,500 | 28 |

^aRepresents median total legal costs at all sites since January 1, 1987.

^bRepresents percent of total costs (legal and cleanup) spent for legal activities.

Legal Costs Were Incurred at Multiple Sites and in Suits With Third Parties and Insurers as Well as With EPA

Most of the 367 respondents reporting involvement at Superfund sites indicated that they had been involved at multiple Superfund sites—17, on average. About half of the respondents were involved at 8 or fewer sites, but 10 percent were involved at 46 or more sites.

Most of the 367 corporations reported having incurred legal costs not only in their dealings with EPA but also in suits against other PRPs or their insurance companies. One hundred twenty-seven (35 percent) reported having been involved in legal actions with their insurance carrier(s) seeking coverage for legal expenses and/or cleanup costs incurred in connection with their Superfund activities. Additionally, 260 corporations (71 percent) reported having been involved in third-party suits; 176 corporations said they had brought legal actions against other firms to obtain their contributions for cleanups, and 222 corporations said they had been the subject of legal actions brought by other firms seeking contributions for cleanup.

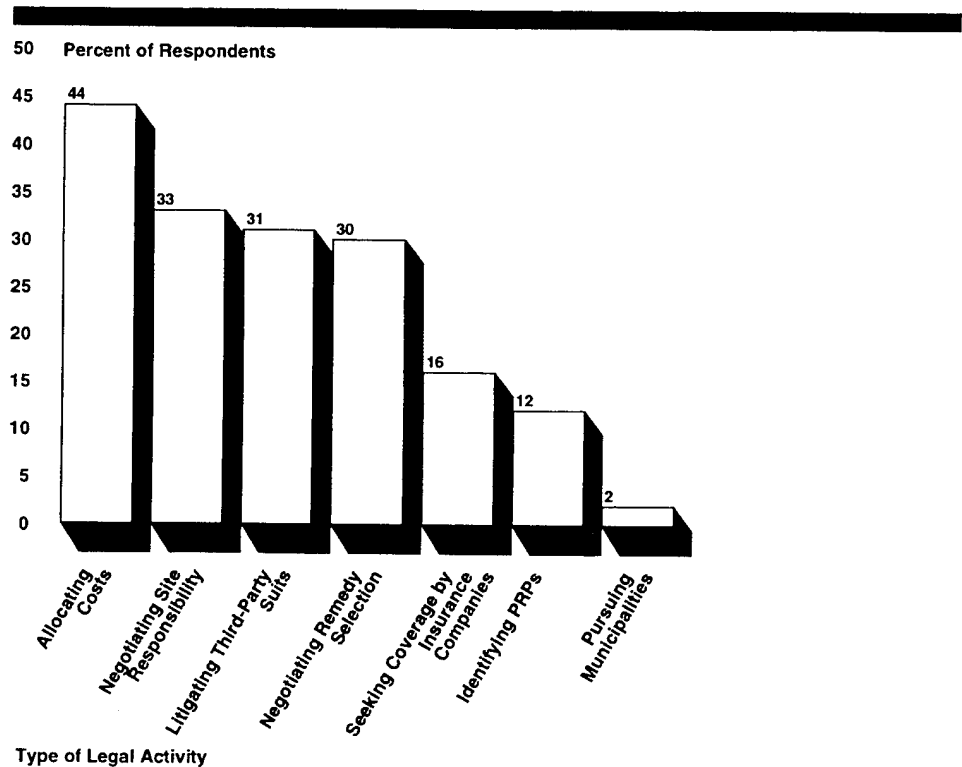
Legal Activities and Factors at Sites Increase Legal Costs

The types of legal activities most commonly cited by respondents as causing them to incur the highest legal costs were (1) allocating the costs of the cleanup, (2) negotiating or litigating with EPA over their corporation's responsibility for the site or over the remedy selected to clean up the site, and (3) pursuing or defending third-party legal actions. According to the respondents, the factors at sites that increased legal costs were lack of good information on the sources of the hazardous waste and a poor job on EPA's part of identifying potentially responsible parties or bringing enforcement actions against these parties.

Companies Say Allocating Cleanup Costs and Negotiating With EPA Increase Legal Costs

Companies engage in many types of legal activities at hazardous waste sites that can ultimately raise their legal costs. We asked respondents to select the two types of activities that caused their corporation to incur the highest legal costs. The most commonly selected responses were allocating the costs of cleanups to each responsible party (44 percent), negotiating with EPA or another regulatory agency either over their company's responsibility for the site (33 percent) or over the remedy to be selected for cleaning up the site (30 percent), and engaging in legal actions with other PRPs (31 percent). (See fig. 2.)

Figure 2: Corporate Activities Linked Most Often With High Legal Costs

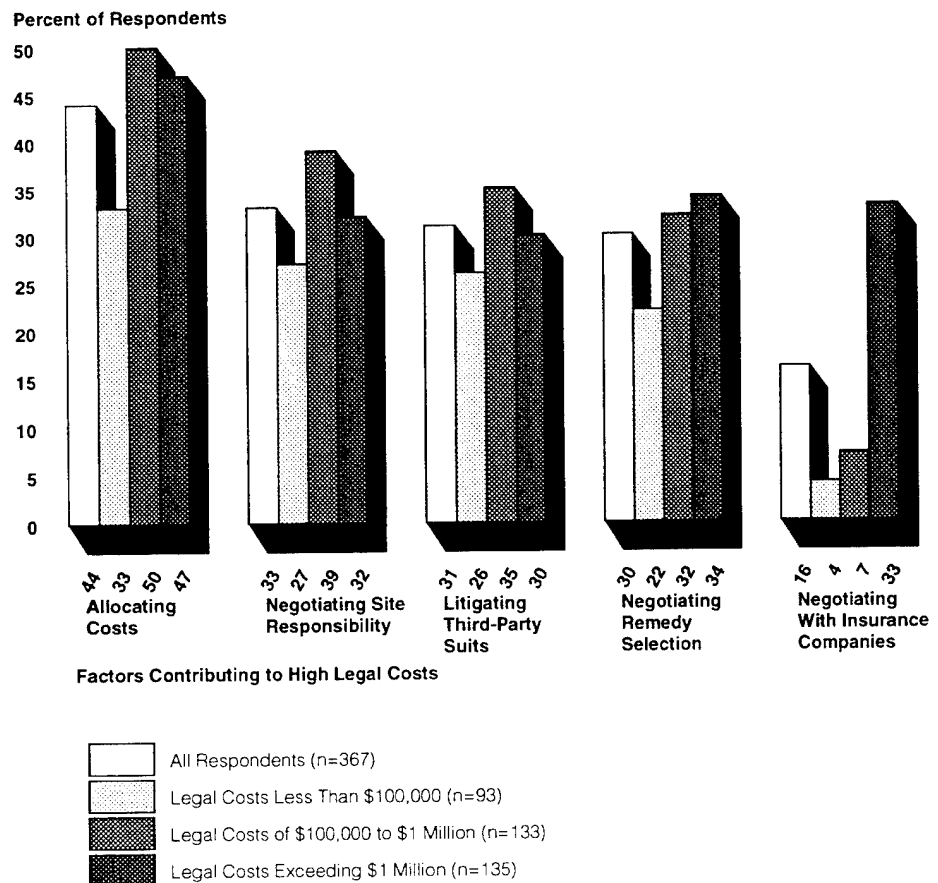


Note: The number of respondents is 367.

As figure 3 shows, the responses varied somewhat with the amounts that the corporations had incurred in legal costs. For example, 44 percent of the respondents involved at Superfund sites indicated that allocating the

costs of cleanups among the responsible parties was one of the two activities primarily responsible for their company's high legal costs. However, while 50 percent of the respondents with legal costs of between \$100,000 and \$1 million said that cost allocation was primarily responsible for high legal costs, only 33 percent of the respondents with legal costs of less than \$100,000 said the same. Similarly, only 16 percent of the respondents involved at sites indicated that disputes with their insurance carriers over coverage for Superfund sites was a major cause of high legal costs. However, 33 percent of the companies that had incurred over \$1 million in legal costs said that disputes with insurance carriers was a major cause.

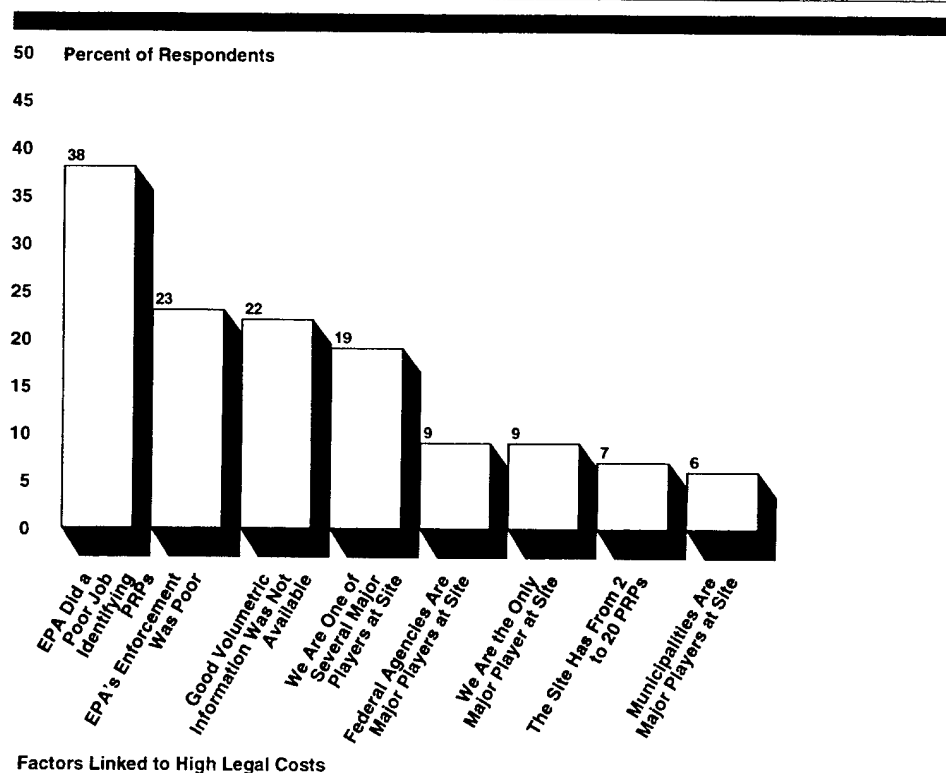
Figure 3: Comparison of Corporate Activities Identified as Raising Legal Costs With Amount of Legal Costs Incurred



PRPs Say Poor Identification and Enforcement and Lack of Good Volumetric Data Increase Legal Costs

The corporations responding to the survey identified three factors related to the Superfund site as primary causes of high legal costs. Thirty-eight percent of the respondents involved at sites said that costs rose when EPA did not do a good job of identifying all PRPs; 23 percent said that costs rose when EPA did not do a good job of bringing enforcement action against all appropriate PRPs; and 22 percent said that costs rose when good volumetric information—that is, information on the quantity and type of wastes contributed to the site by each PRP—was not readily available. (See fig. 4.)

Figure 4: Site-Related Factors Linked Most Often With High Legal Costs



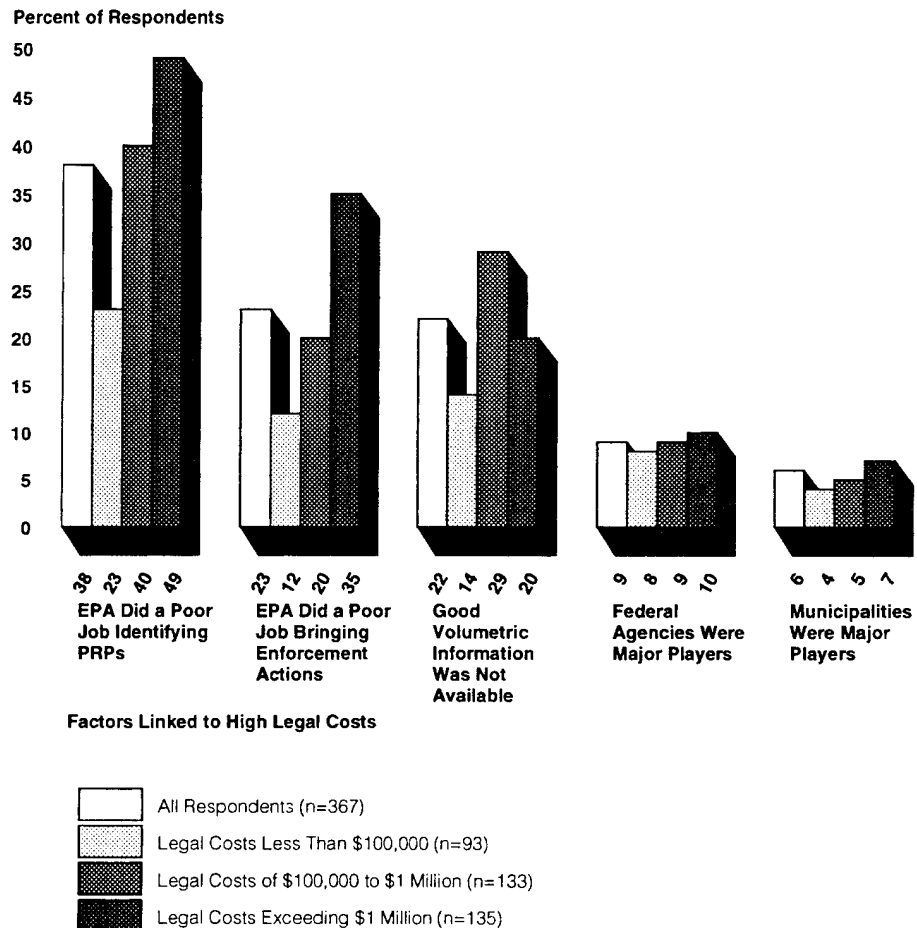
Note: The number of respondents is 367.

The extent to which EPA identifies PRPs and brings enforcement actions to obtain their participation in cleaning up sites can influence private parties' transaction costs. Some PRPs against which EPA has taken action claim that

EPA does not make an effort to identify all PRPs or that it takes enforcement action only against the PRPs that it considers most capable financially of performing the cleanup while ignoring other viable PRPs. These PRPs say that these practices greatly increase the legal costs of the selected PRPs, which then must identify the remaining PRPs and bring them into the cleanup process. EPA, however, disagrees, contending that, on average, it brings enforcement actions against PRPs responsible for 80 percent of the waste at sites.

As was the case for legal activities, the identification by corporations of site-related factors that increase their legal costs varied somewhat with the total amount they had incurred in legal costs. As figure 5 shows, corporations that had incurred over \$1 million in legal costs were much more likely to believe that legal costs increase when EPA does a poor job of identifying PRPs and bringing enforcement actions than were corporations that had incurred less than \$100,000 in legal costs. Corporations with less than \$100,000 in total legal costs were also less concerned about the availability of good volumetric information than were those with higher legal costs.

Figure 5: Comparison of Site-Related Factors Identified as Raising Legal Costs With Amount of Legal Costs Incurred



Corporations identified these same factors—EPA's not identifying all PRPs and not bringing enforcement actions, as well as lack of good volumetric information—as primarily responsible for the high legal costs at sites where they had incurred at least \$50,000 in legal costs.

Certain Factors at Sites Decrease Legal Costs

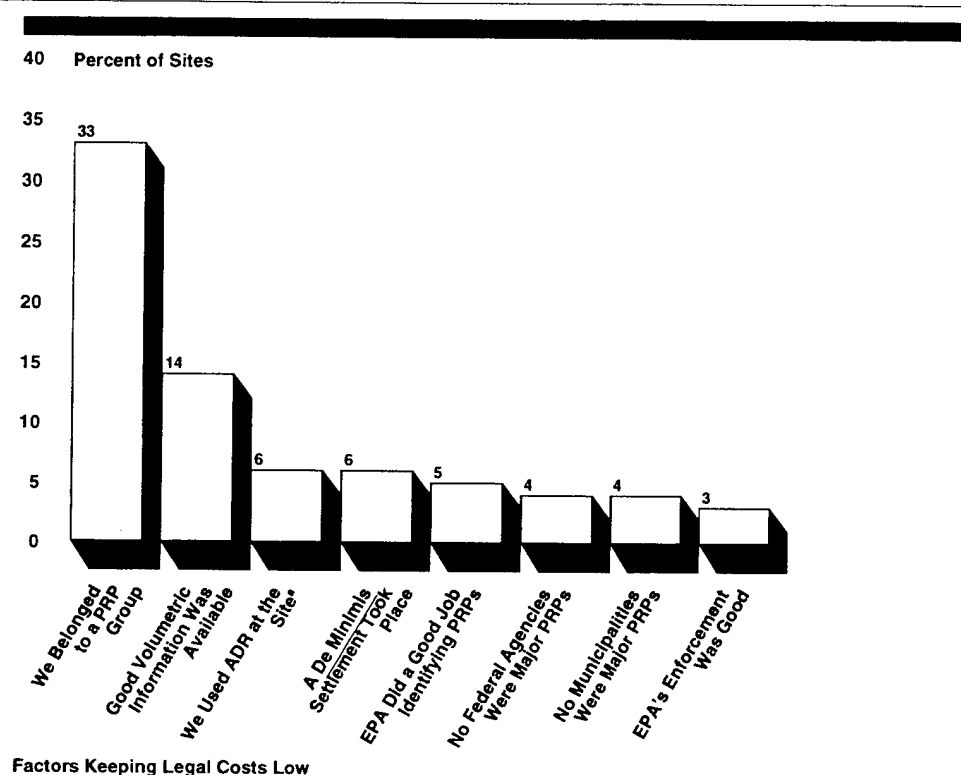
In assessing their experience at all of their Superfund sites, the companies indicated that having volumetric information readily available for use in allocating costs among the PRPs was important in minimizing their legal costs. They also indicated that their legal costs decreased when EPA did a

good job of identifying PRPs and bringing enforcement actions to obtain their participation in cleaning up sites. In assessing their experience at sites where they had incurred over \$50,000 in legal costs, the companies often did not cite any factors as contributing to keeping their legal costs low. However, when they did cite such factors, they indicated that joining a PRP group was most likely to help minimize their legal costs.

According to 72 percent of the companies, for their sites generally, the availability of good volumetric information either moderately or greatly decreased their legal costs. A majority of the companies indicated that their legal costs were moderately or greatly reduced at sites where EPA did a good job of identifying all PRPs and bringing enforcement actions against them (59 percent and 53 percent, respectively). Fifty-two percent of the companies also believed that joining a PRP group helped reduce their legal costs.

For 33 percent of the sites where they had incurred more than \$50,000 in legal costs, the companies indicated that belonging to a PRP group was one of the two most important factors in keeping their legal costs low; for 14 percent of the sites, they cited the availability of good volumetric information. (See fig. 6.)

Figure 6: Factors That Contribute to Keeping Legal Expenses as Low as Possible



*ADR stands for alternative dispute resolution.

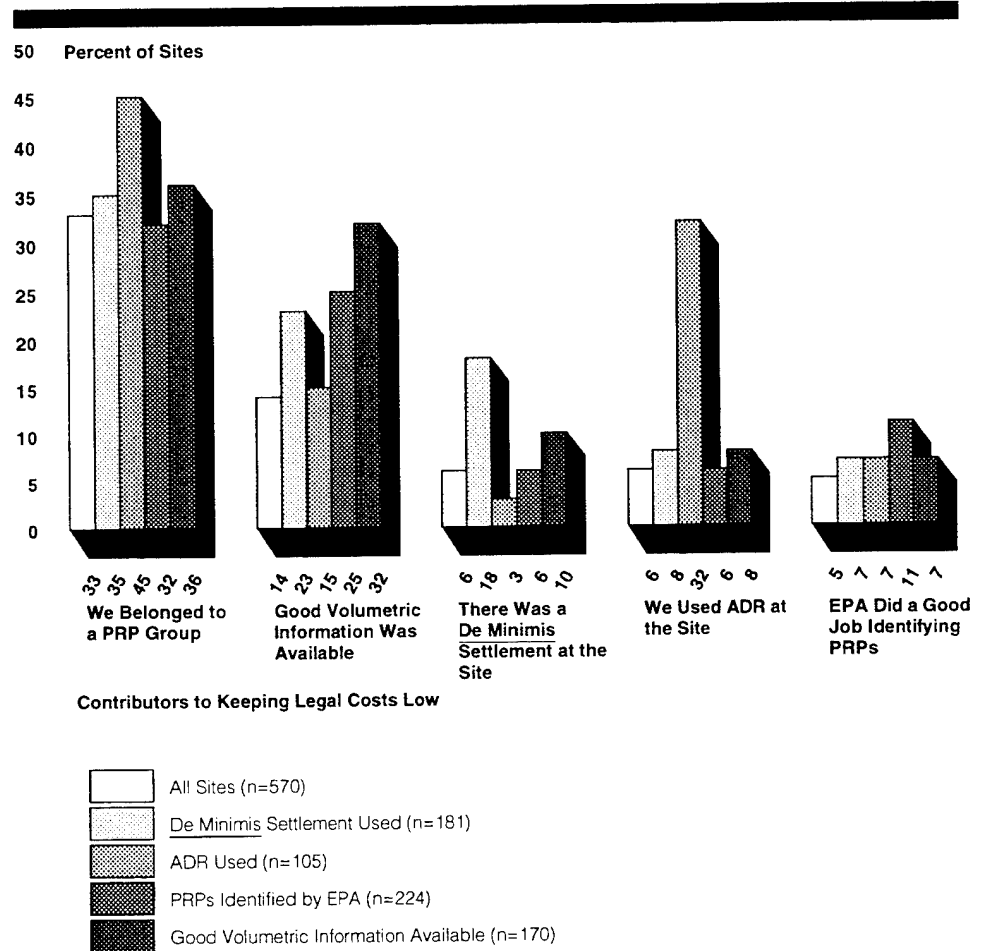
Note: The number of sites is 570.

Companies cited belonging to a PRP group much more frequently than other factors as a way to keep legal costs low, in part because these groups can be formed at most sites. Many other factors were not always applicable. For example, good volumetric information was available, according to respondents, at only 170 of the 570 sites. For these 170 sites, companies cited the availability of volumetric data 32 percent of the time as a factor in keeping legal costs low. (See fig. 7.)

Similarly, the survey results indicate that the use of alternative dispute resolution techniques and de minimis settlements, which are tools authorized by the Superfund law for reducing legal costs, may be effective. Corporations thought that alternative dispute resolution techniques were important factors in keeping legal costs low at 32 percent of the high-cost

sites where they were used and that de minimis settlements were important at 18 percent of the high-cost sites where they were used.

Figure 7: Factors That Contribute to Keeping Legal Expenses Low



Agency Comments

We discussed the results of our survey with officials of EPA's Office of Site Remediation Enforcement and other EPA units. These officials said that they thought that the Superfund reauthorization bill, which the Congress considered in 1994 and may reconsider in 1995, would address many of the causes of high transaction costs discussed in this report.

We performed our work from June 1993 to November 1994 in accordance with generally accepted government auditing standards.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the appropriate congressional committees; the Administrator, EPA; and other interested parties. We will also make copies available to others upon request.

Please contact me at (202) 512-6111 if you or your staff have any questions about this report. Major contributors to this report are listed in appendix V.

A handwritten signature in black ink, appearing to be 'P. Guerrero', written over a faint, stylized diamond-shaped graphic.

Peter F. Guerrero
Director, Environmental
Protection Issues

List of Requesters

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives

The Honorable Frank R. Lautenberg
Chairman, Subcommittee on
Superfund, Recycling and Solid
Waste Management
Committee on Environment and
Public Works
United States Senate

The Honorable Al Swift
Chairman, Subcommittee on
Transportation and Hazardous
Materials
Committee on Energy and Commerce
House of Representatives

The Honorable Barbara Boxer
United States Senate

The Honorable Joseph I. Lieberman
United States Senate

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Abbreviations

| | |
|--------|---|
| ADR | alternative dispute resolution |
| CEO | chief executive officer |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| EPA | Environmental Protection Agency |
| GAO | General Accounting Office |
| PRP | potentially responsible party |

Objectives, Scope, and Methodology

Our objectives in this study were to obtain information on the amount of legal and cleanup costs incurred by corporations at Superfund sites and to identify the factors that these corporations believe increase and decrease their legal costs at these sites. To satisfy these objectives, we surveyed 1,000 corporations—the Fortune 500 Industrial and the Fortune 500 Service corporations.

We mailed our survey to the chief executive officers (CEO) of the 1,000 corporations contained in the 1993 Fortune directory of industrial corporations and service corporations. The survey requested information on the costs incurred after January 1, 1987, for cleanup and for legal expenses at Superfund sites and solicited the corporations' opinions on the factors that cause these costs to increase or decrease. We enclosed a list of the Superfund sites with our survey to ensure that the corporations would report activities for sites under the federal Superfund program rather than under state cleanup programs.

The 54-page questionnaire used for our survey consisted of two sections. The first section (16 pages) covered the corporation's experiences at all Superfund sites at which it had been involved since January 1, 1987. The second section requested information on up to three Superfund sites at which the corporation had incurred legal costs of \$50,000 or more. If the corporation had more than three sites meeting this criterion, we requested information on the three at which the corporation had incurred the highest legal costs. If the corporation had no sites meeting this criterion, it was to leave this section blank.

We used the two Fortune 500 lists of corporations because a complete list of all parties that had incurred legal costs at Superfund sites was not available for our review. More specifically, the lists of potentially responsible parties (PRP) maintained by the Environmental Protection Agency (EPA) omit some third parties brought into the site negotiations by other PRPs, and PRP lists held by PRP steering committees often cannot be released because of confidentiality agreements. The 1,000 corporations we surveyed do not represent PRPs as a whole, since the list excludes small and medium-sized companies as well as governmental PRPs, such as municipalities and other local governments. However, the 1,000 corporations do represent a wide range of U.S. commercial activity.

We pretested our survey at 14 corporations located in various parts of the United States. The pretesting was intended to ensure that (1) the questions were readable and clear, (2) the terms were understandable, (3) the survey

did not burden the corporations to the extent that it would discourage cooperation, and (4) the survey was independent and unbiased in its point of view. The final survey incorporates the results of our pretesting.

During the pretesting phase of our survey, it became evident that the corporations considered the questions to be highly sensitive. To address this concern, we used procedures to guarantee the anonymity of all survey responses. Respondents to the pretests told us that these measures were necessary to guarantee responses to the survey. Our procedures prevent us from knowing the identity of the respondent for any of the surveys returned to us. The use of a separate return postcard for follow-up purposes allowed us to track which corporations did and did not mail back responses to the survey.

To increase the rate of response to our survey, we mailed a prenotification letter to the CEOs on November 2, 1993, before we mailed the survey on November 9, 1993. We also followed up the survey mailing with three mailings, including (1) a reminder postcard (Nov. 29, 1993), (2) a reminder letter requesting a contact person and telephone number (Dec. 13, 1993), and (3) a replacement survey for corporations not yet responding (Mar. 16, 1994). Many companies phoned us to ask for additional time to complete the survey. Because of these requests, we did not set a specific cutoff date for responses. We received the last survey included in our analysis on May 3, 1994.

A total of 666 corporations provided useable responses to our survey, representing a response rate of 67 percent. This response rate was similar for both the industrial and the service corporations. Of the corporations responding, 367 (55 percent) had incurred costs for Superfund sites since January 1, 1987. We asked the respondents to identify the type of industry in which the corporation conducts the majority of its business. Table I.1 provides information by type of industry on the number of corporations involved at Superfund sites and these corporations' highest level of involvement at Superfund sites.

Appendix I
Objectives, Scope, and Methodology

Table I.1: Summary of Responses to Questionnaire

| Industry type | Number of PRPs at Superfund sites | Highest level of involvement | | | |
|----------------------------------|-----------------------------------|------------------------------|-----------|-----------------------|--------------------------|
| | | De minimis only | Minor | Major at 1 or 2 sites | Major at 3 or more sites |
| Agriculture, forestry, fisheries | 6 | 3 | 0 | 3 | 0 |
| Mining ^a | 16 | 1 | 4 | 4 | 7 |
| Chemicals, petroleum, rubber | 37 | 4 | 5 | 7 | 21 |
| Manufacturing ^b | 171 | 34 | 27 | 47 | 63 |
| Transportation | 25 | 3 | 9 | 7 | 6 |
| Utilities, communications | 31 | 4 | 6 | 13 | 8 |
| Sales | 18 | 10 | 5 | 3 | 0 |
| Financial, banking | 15 | 8 | 1 | 6 | 0 |
| Insurance, real estate | 9 | 5 | 2 | 2 | 0 |
| Diversified services | 11 | 1 | 3 | 1 | 6 |
| Other | 26 | 1 | 4 | 7 | 14 |
| Not specified | 2 | 0 | 1 | 1 | 0 |
| Total | 367 | 74 | 67 | 101 | 125 |
| Percent | 100% | 20% | 18% | 28% | 34% |

Note: Respondents used their own definition of "major" and "minor" to answer the survey questions. We defined PRPs involved at single-party sites as having major involvement.

^aIncludes petroleum and natural gas extraction.

^bDoes not include chemical, petroleum, and rubber products.

Of the 367 corporations reporting involvement at Superfund sites, 255 reported incurring legal costs of \$50,000 or more at least at one site. In total, the 255 corporations provided information on 570 such sites. We analyzed the information on the corporations' experiences for these 570 sites separately from the comparable information for all Superfund sites. A copy of the survey, including aggregated responses, appears in appendix IV.

Many of the questions in our questionnaire asked for responses in ranges of numbers. We used a median statistic to report representative answers

for such questions. The median is the number representing the point dividing the upper half of the responses from the lower half. We interpolated the median for questions employing ranges in order to provide the reader with an estimate of the place within the range that contains the median. For example, we present the typical percent of total costs spent by a corporation for legal expenses. The median falls within the range "31 to 40 percent." We know this because 46 percent of the respondents fall below this category and 13.1 percent fall within it. To interpolate the median, we took the number of respondents in the category "31 to 40 percent" and calculated the point at which 50 percent of the respondents would be reached. We assumed that respondents were evenly spread throughout the 10 points of the "31 to 40 percent" range. Hence, we estimate that the median is 33 percent. That is, 50 percent of the respondents would have legal costs above 33 percent and 50 percent would have costs below 33 percent. The actual median could be somewhat lower or higher depending on the actual distribution of respondents over the points of the range.

We conducted our review from June 1993 to November 1994 in accordance with generally accepted government auditing standards.

Transaction Costs

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) authorizes EPA to compel parties responsible for hazardous waste at Superfund sites to clean them up or to reimburse EPA for its cleanup costs. Courts have interpreted responsible parties' liability under Superfund to be strict, joint and several, and retroactive. Under strict liability, a party may be liable for cleanup even though its actions were not considered negligent when it disposed of the wastes. Because liability is joint and several, when the harm done is indivisible, one party can be held responsible for the full cost of the remedy even though that party may have disposed of only a portion of the hazardous substances at the site. Retroactive liability means that liability applies to actions that took place before CERCLA was enacted.

EPA has had considerable success in recent years in enforcing the cleanup responsibilities of PRPs under this system of liability. For example, PRPs undertook 79 percent of the new cleanups started in fiscal year 1993. The liability standards may also reduce future hazardous waste problems by promoting careful handling of hazardous wastes and encouraging voluntary restoration of contaminated property. At the same time, allocating responsibility for cleanup costs under the joint and several liability standard can be difficult and expensive. Data on wastes disposed of years ago by the parties may be limited; disputes can arise about how the relative toxicity of wastes should affect responsibility for cleanup; and liability for wastes deposited by unknown contributors may have to be apportioned among known contributors. Negotiations take place both between EPA and the PRPs and among the PRPs. EPA encourages PRPs to organize committees at each site to address allocation issues. Individual PRPs and PRP committees hire counsel to represent them and technical consultants to support their negotiation or litigation positions. The costs associated with negotiation and litigation are sometimes referred to as transaction costs.

Transaction costs at some sites are compounded by lawsuits (sometimes called third-party suits) brought by PRPs against other parties that the PRPs believe contributed to the contamination and should help to pay for the cleanup. These contribution suits can involve hundreds and, in some instances, over a thousand parties. Transaction costs can also result from disputes between PRPs and their insurers. As PRPs are notified of their potential liabilities, they may seek coverage under their insurance policies. If insurers refuse these claims, litigation may follow.

Information on High-Cost Sites

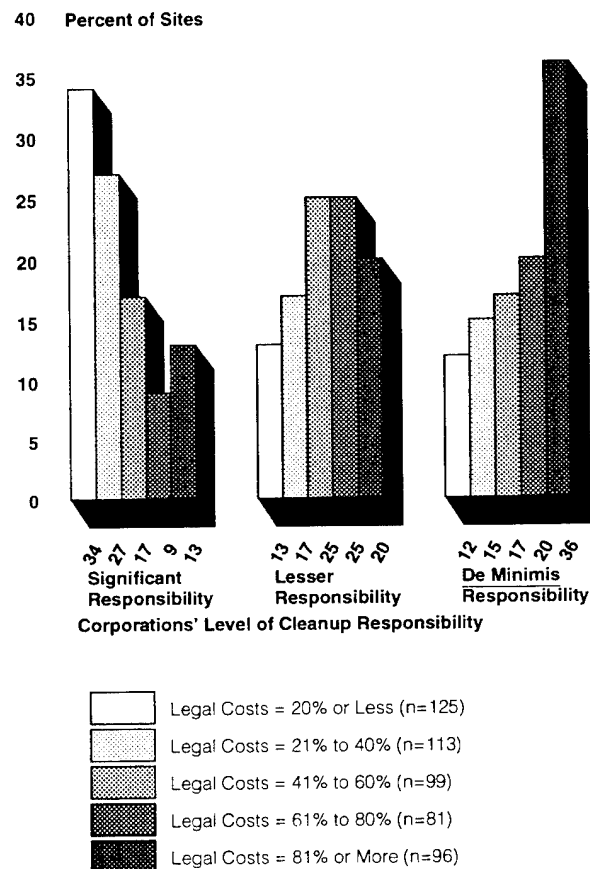
In addition to requesting information on total expenditures, we asked each corporation to provide information on expenditures at up to three sites where the corporation had incurred legal costs of \$50,000 or more. The corporations provided this information for 570 sites. This appendix discusses the information they provided on the amount of their costs and the reasons for the high legal costs.

At 570 High-Cost Sites, Legal Costs Average 44 Percent of Total Site Costs

At the high-cost sites, the percentage of total costs attributable to legal activities varied considerably, basically with the level of the corporation's responsibility for the cleanup at the site. Generally, corporations that expect to be responsible for a lesser share of the cleanup, including de minimis players, reported spending a higher percentage of their total costs—although a smaller dollar amount—on legal activities than did corporations with a significant liability for site cleanup activities. (See fig. III.1.)

Appendix III
Information on High-Cost Sites

Figure III.1: Percentage of Legal Costs by Level of Corporations' Cleanup Responsibility



Corporations reported a median expenditure of \$290,000 on legal costs at the 570 sites. This amount represents about 44 percent of the total reported median cost. However, they also reported legal costs in excess of \$1 million at 99 sites. Corporations that expect to be liable for a large share of a site's cleanup costs reported significantly higher expenditures for legal costs than did corporations that expect to be liable for a small share. At sites where they expect to have significant liability for cleanup costs, corporations reported a median expenditure of \$550,000 for legal costs. At sites where they expect to have a lesser share of liability for cleanup costs, their reported median expenditure for legal costs was \$200,000, and at sites where they expect to play a de minimis role, it was \$130,000.

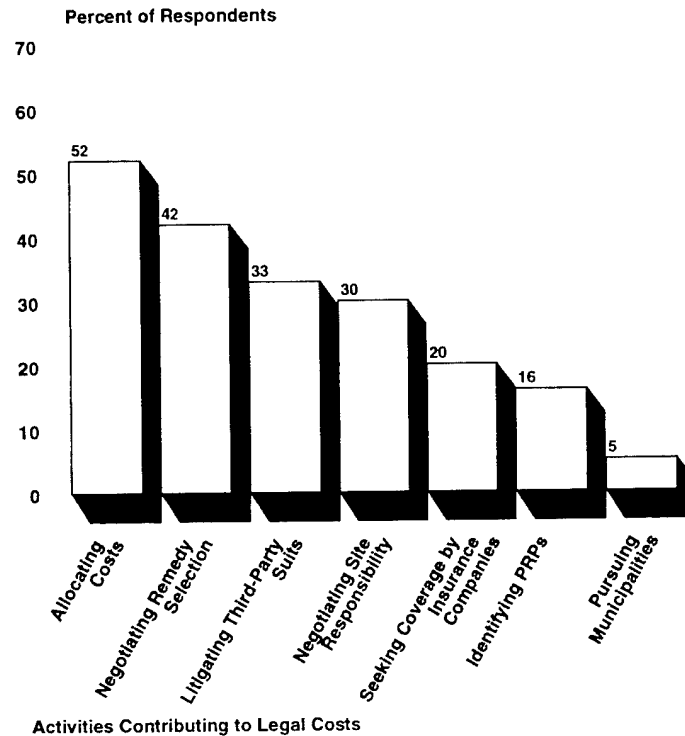
We asked corporations how much they have spent solely on cleanup activities at these sites since January 1, 1987. The corporations reported having incurred median costs of about \$370,000 so far at each of the 570 sites but estimated that their share of the final cleanup costs—which they estimated would be about \$34 million per site—would be about \$1.5 million per site. They estimated that their legal costs would be about 30 percent of their total site costs when the cleanups had been completed.

Reasons for High Legal Costs

In addition to asking the corporations to identify the activities that they believed caused them to incur the highest legal costs at all of their Superfund sites, the survey also asked them to identify these activities at their three most expensive sites (i.e., sites where they had spent at least \$50,000 on legal costs). As figure III.2 shows, the activities cited as primarily responsible for high legal costs at the 570 sites selected by the respondents as most expensive are closely correlated with the activities cited as primarily responsible for high legal costs at all of their Superfund sites. For example, they cited allocation activities as a primary reason for high legal costs at 52 percent of the high-cost sites; as noted earlier, 44 percent of the respondents cited this activity as a cause of high legal costs at all of their sites.

Appendix III
Information on High-Cost Sites

Figure III.2: Activities Contributing to High Legal Costs



Note: The number of sites is 570.

The responses provided for the high-cost sites varied somewhat with the respondent's level of involvement at the site. For each site, we asked the corporation to identify its level of involvement, as shown in table III.1.

Table III.1: Extent of Corporate Involvement at High-Cost Sites

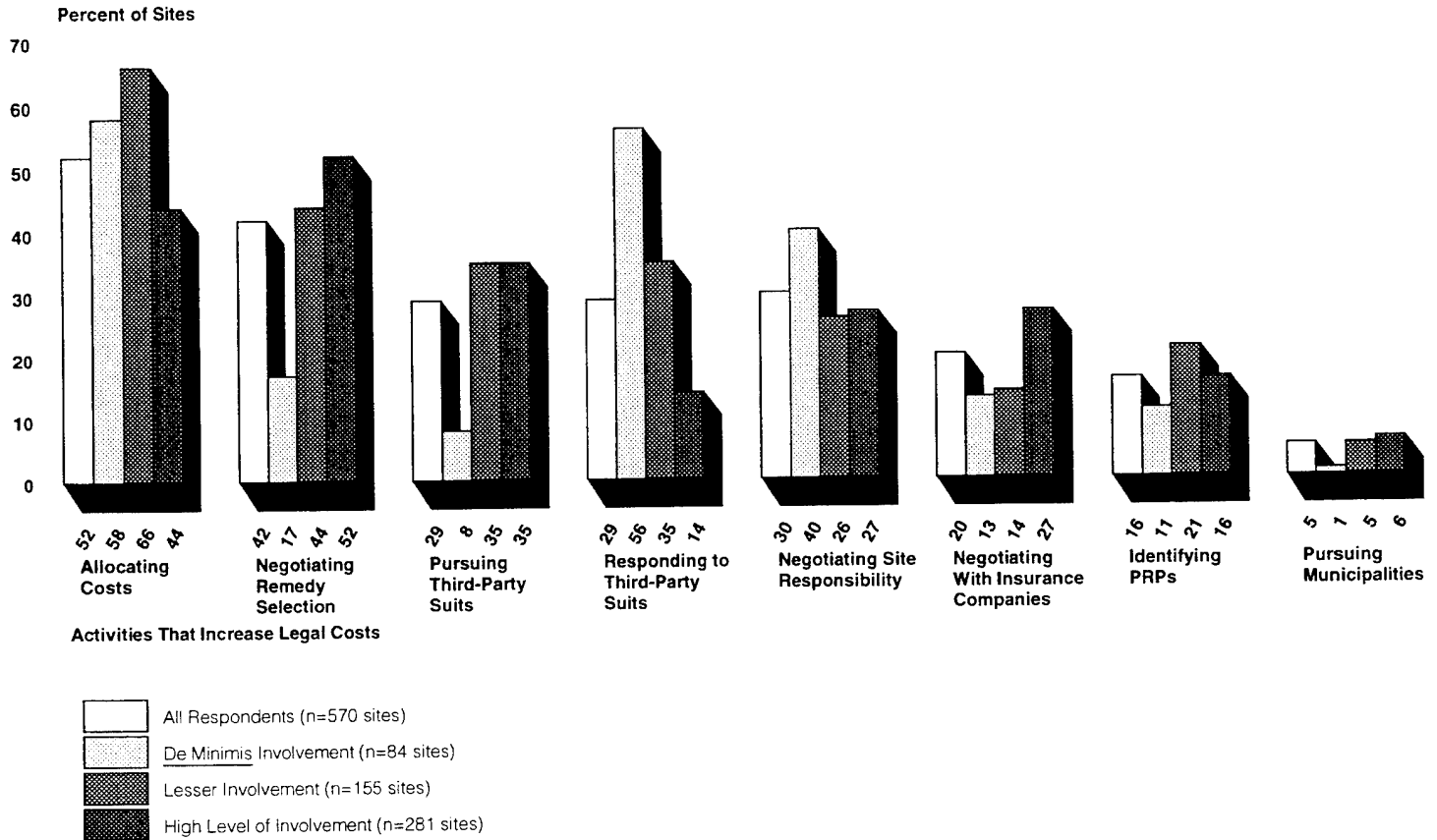
| Number of sites | Corporation's involvement |
|-----------------|--|
| 281 | Had significant liability for a large share of the cleanup |
| 155 | Was responsible for a lesser share but expect to remain involved |
| 114 | Expect to be found not responsible or to be a de minimis party |
| 20 | No response |
| 570 | Total sites |

While respondents cited allocation activities as a primary reason for high legal costs at 52 percent of the 570 high-cost sites, their responses ranged from a low of 44 percent at sites where they said they were responsible for a large share of the cleanup to a high of 66 percent at sites where they said they had a smaller responsibility but did not expect to be a de minimis party. (See fig. III.3.) Similarly, respondents identified negotiating with EPA over the selection of a remedy as a major concern at sites where they had significant involvement but not at sites where they had limited (i.e., de minimis) involvement. However, respondents with de minimis involvement were much more likely to indicate that the process of negotiating with EPA over the corporation's liability at the site was a primary cause of high legal costs.

A similar situation occurred with third-party suits. Corporations with significant responsibility for a site's cleanup said that pursuing suits against other PRPs was a major cause of high legal costs but seldom cited responding to such suits. De minimis PRPs, however, indicated that responding to such suits was second only to allocating cleanup costs as a cause of high legal costs.

Appendix III
Information on High-Cost Sites

Figure III.3: Comparison of Activities Contributing to High Legal Costs With Level of PRPs' Involvement



Survey of Fortune 500 Industrial/Service Corporations

U.S. General Accounting Office

GAO Survey of the Fortune 500 Industrial/Service Corporations Part 1: Costs for all NPL Sites

Introduction

The General Accounting Office (GAO), an independent agency of the U.S. Congress, is surveying Fortune 500 corporations to determine their legal costs resulting from responsibility for toxic waste sites on the National Priorities List (NPL). (There are approximately 1,300 NPL, or Superfund, sites throughout the nation.) The answers to this survey will be used to report to the Congress as it considers reauthorizing the Superfund program. This survey contains questions about your corporation's overall costs associated with NPL sites. It also contains questions on the aspects of Superfund activity that increase your corporation's legal costs.

This survey is completely anonymous. There is no identification of your corporation on this questionnaire. You are asked only to return a separate postcard so that we will know which corporations participated in our survey. There is no information that can link the postcard with your questionnaire.

Your cooperation is vital to the accuracy of our study. If we do not get responses from enough corporations, we will not be able to depict the true costs to the private sector of legal expenses for NPL sites.

Please return the survey in the enclosed envelope within the next 2 weeks to help us avoid costly follow-up mailings. If the envelope is missing, please return your survey to:

Mr. James Jorritsma
U.S. General Accounting Office
10 Causeway Street, Room 575
Boston, MA 02222

Please call Mr. Jorritsma collect at (617) 565-7500 if you have questions about your survey answers.

Reminders:

This survey covers the activities of your corporation concerning NPL sites since January 1, 1987.

Legal costs in this survey include only those legal costs related to your corporation's NPL sites. Include fees charged for attorneys, paralegals, and related legal support services. Do not include technical costs billed through a law firm, such as engineering studies. Information on both in-house and outside legal costs is requested below.

Cleanup costs include all technical consultants and studies used to decide the proper cleanup for an NPL site as well as the construction and monitoring of the cleanup remedy.

PRPs are potentially responsible parties who may have to contribute to the cleanup at an NPL site. Include both named and unnamed PRPs.

1. Has your corporation ever been involved as a potentially responsible party for a site on the National Priorities List (NPL)? (Please see enclosed booklet of NPL sites.) (Check one.) N=666

1. 56% Yes → Go to next question.

2. 44% No → Skip to question 26, page 16.

Note: "N" is the number of responses. Percentages may not add to 100 due to rounding.

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Survey of Fortune 500 Industrial/Service
Corporations

Types of NPL sites

2. Since January 1, 1987, for how many NPL sites has your corporation incurred costs as a potentially responsible party? Include all sites with which your corporation has been involved since January 1, 1987. Also, please show the number of sites your corporation has in each of the categories listed below. (Enter numbers; if none, enter "0".)

Definitions:

A de minimis party has a lesser responsibility for a site and is allowed to pay a set amount of money to be released from future responsibility for the site.

"Major player" refers to those NPL sites where your corporation considers itself to be a major player.

| | Number of sites |
|--|--------------------|
| a. Only PRP for site | <u>3%</u> |
| b. Major player (at sites with more than one PRP) | <u>16%</u> |
| c. Minor player | <u>36%</u> |
| d. <u>De minimis</u> party | <u>45%</u> |
| Total NPL sites | <u>6213</u> |

N=367
Range=1-174
Mean=17

Categories a, b, c, and d should sum to the total number of NPL sites.

If your corporation has not incurred costs for any NPL sites since January 1, 1987, skip to Question 26, page 16.

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Types of legal activity

3. Has your corporation been a party to any legal action between you and your insurance carrier or carriers relating to any NPL sites? (Check all that apply.)

Yes No
(1) (2)

a. Coverage of cleanup costs for a particular NPL site N=342 27% 73%

b. Coverage of cleanup costs for a group of sites including NPL site(s) N=349 29% 71%

c. Coverage of legal costs N=355 31% 69%

d. If you answered "yes" to any of the above legal actions between your corporation and your insurance carrier(s): How many NPL sites did these legal actions cover? (Enter number.)

1965 NPL sites N=122
Range=1-120
Mean=16

4. Has your corporation brought legal actions against any third parties to obtain their contributions for cleanups of NPL sites? Include activities pursued both individually by your corporation and as a member of a group. (Check one.) N=362

1. 49% Yes → a. At how many NPL sites?
(Enter number.)

550 NPL sites N=169
Range=1-30
Mean=3

2. 36% No

3. 3% Not yet, but plan such action within 6 months

4. 9% Too early to pursue any third parties

5. 3% Cannot determine

5. Has another PRP brought any legal actions against your corporation to obtain contributions for cleanups of NPL sites? (Check one.) N=364

1. 61% Yes → a. At how many NPL sites?
(Enter number.)

861 NPL sites N=210
Range=1-23
Mean=4

2. 37% No

3. 2% Cannot determine

6. Has the U.S. government filed any legal actions against your corporation to recover costs resulting from your corporation's responsibility for any NPL sites, either individually or as a member of a group? (Check one.) N=362

1. 52% Yes → a. At how many NPL sites?
(Enter number.)

846 NPL sites N=181
Range=1-40
Mean=5

2. 46% No

3. 2% Cannot determine

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Corporations

Overall legal and cleanup costs

Legal costs, for the purposes of this survey, should include

- Costs for in-house counsel for NPL sites
- Costs for outside counsel for NPL sites
- Legal costs incurred through a PRP group as well as individually by your corporation for NPL sites

7. Considering your corporation's total legal costs for all NPL sites since January 1, 1987, what is your level of legal costs for each of the activities listed below? (Check one for each row.)

| | Very high (1) | High (2) | Moderate (3) | Low (4) | Very low/ None (5) | No basis to judge (6) |
|---|---------------------|-------------|-----------------|------------|--------------------------|-----------------------------|
| A. Negotiating or litigating with insurance carriers over coverage/claims for NPL sites N=364 | 14% | 8% | 10% | 17% | 42% | 9% |
| B. Pursuing legal actions with one or more municipalities to obtain their cooperation for cleanup of an NPL site N=363 | 2% | 4% | 14% | 19% | 50% | 11% |
| C. Identifying and involving additional parties who should share cleanup costs for your NPL sites N=363 | 5% | 19% | 32% | 16% | 24% | 4% |
| D. Allocation activity including negotiating with other potentially responsible parties over each party's share of costs for NPL sites N=364 | 19% | 26% | 24% | 15% | 15% | 2% |
| E. Pursuing legal actions against third parties to obtain their contributions for cleanups of NPL sites N=362 | 7% | 14% | 22% | 16% | 34% | 6% |

(continued on next page)

Appendix IV
Survey of Fortune 500 Industrial/Service
Corporations

(continued)

| | Very high (1) | High (2) | Moderate (3) | Low (4) | Very low/ None (5) | No basis to judge (6) |
|---|---------------------|-------------|-----------------|------------|--------------------------|-----------------------------|
| F. Responding to legal actions brought by PRPs trying to obtain contributions from your corporation for cleanup of NPL sites N=364 | 8% | 15% | 27% | 17% | 27% | 5% |
| G. Negotiating or litigating with the U.S. Environmental Protection Agency (U.S. EPA) or another regulatory agency over <i>responsibility</i> for NPL sites (either by your corporation or by a PRP group) N=363 | 13% | 21% | 28% | 15% | 20% | 4% |
| H. Negotiating or litigating with U.S. EPA or another regulatory agency about <i>remedy selection</i> at NPL sites N=361 | 13% | 23% | 23% | 14% | 23% | 5% |
| I. Other (Please specify.) | | | | | | |
| J. Other (Please specify.) | | | | | | |

8. Considering the types of legal activities listed in the table above, which two caused your corporation to spend the most for NPL sites? (Write the letters of the items in the boxes below. Use "X" if you feel there are no applicable factors.)

1st
choice

2nd
choice

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Please use your corporation's best available information
for the cost information requested below. Report only
legal costs related to your corporation's NPL sites.

9. What is your best estimate for the total amount that your corporation has spent since January 1, 1987, for legal costs for NPL sites? Include legal costs spent either solely or as your corporation's share of a PRP group's costs. Include legal costs for both in-house and outside counsel. (Check one.) N=365

1. 12% \$25,000 or less
2. 7% \$25,001 to \$50,000
3. 7% \$50,001 to \$100,000
4. 25% \$100,001 to \$500,000
5. 12% \$500,001 to \$1 million
6. 13% \$1.1 million to \$2.5 million
7. 9% \$2.6 million to \$5 million
8. 6% \$5.1 million to \$10 million
9. 6% \$10.1 million to \$20 million
10. 3% \$20.1 million to \$50 million
11. 3% \$50.1 million to \$100 million
12. 0% Over \$100 million
13. 1% Do not have estimate → Skip to 11.

10. Which category below best describes the basis for your answer to the previous question? (Check one.)
N=352

1. 15% Pulled actual figures from accounting system or other source
2. 48% Estimated answer primarily using actual figures
3. 36% Estimated answer primarily using personal knowledge and experience
4. 9% Other (Please specify.)

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Survey of Fortune 500 Industrial/Service
Corporations

11. Considering your corporation's total *cleanup costs* for all NPL sites, what is your level of costs since January 1, 1987, for each of the activities listed below? (Check one for each row.)

Definition: *Cleanup costs* include all technical consultants and studies used to decide the proper cleanup for an NPL site as well as the construction and monitoring of the cleanup remedy. Do not include legal costs that were reported in Question 9.

| | Very high (1) | High (2) | Moderate (3) | Low (4) | Very low/ None (5) | No basis to judge (6) |
|--|------------------|-------------|-----------------|------------|--------------------------|-----------------------------|
| a. Conducting technical studies to determine appropriate cleanup remedies for NPL sites N=362 | 20% | 25% | 20% | 12% | 18% | 6% |
| b. Reimbursing U.S. EPA for its past cleanup costs at NPL sites N=360 | 9% | 21% | 22% | 19% | 22% | 7% |
| c. Settling with U.S. EPA for future costs of cleanup remedies N=363 | 6% | 20% | 20% | 18% | 25% | 11% |
| d. Constructing cleanup remedies for NPL sites N=361 | 13% | 20% | 21% | 13% | 23% | 11% |
| e. Operation and maintenance costs, including monitoring cleanup remedies for NPL sites N=362 | 3% | 13% | 21% | 19% | 31% | 14% |

f. Please describe any other significant cleanup costs below.

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12. What is your best estimate of the total amount that your corporation has spent since January 1, 1987, for cleanup costs at NPL sites including technical studies? Include cleanup costs incurred either solely or as your corporation's share of a PRP group's costs. (Check one.)
N=362

1. 23% \$100,000 or less
2. 15% \$100,001 to \$500,000
3. 9% \$500,001 to \$1 million
4. 16% \$1.1 million to \$2.5 million
5. 8% \$2.6 million to \$5 million
6. 9% \$5.1 million to \$10 million
7. 6% \$10.1 million to \$20 million
8. 6% \$20.1 million to \$50 million
9. 3% \$50.1 million to \$100 million
10. 2% Over \$100 million
11. 3% Do not have estimate → Skip to 14.

13. Which category below best describes the basis for your answer to the previous question? (Check one.)
N=351

1. 26% Pulled actual figures from accounting system or other source
2. 41% Estimated answer primarily using actual figures
3. 32% Estimated answer primarily using personal knowledge and experience
4. 1% Other (Please specify.)

14. What is your best estimate for the total amount that your corporation has spent since January 1, 1987, for all matters relating to NPL sites, including cleanup costs (reported in Question 12) and legal costs (reported in Question 9)? Include *all* costs your corporation incurred either solely or as your share of a PRP group's costs. (Check one.) N=362

1. 17% \$100,000 or less
2. 16% \$100,001 to \$500,000
3. 8% \$500,001 to \$1 million
4. 15% \$1.1 million to \$2.5 million
5. 10% \$2.6 million to \$5 million
6. 11% \$5.1 million to \$10 million
7. 7% \$10.1 million to \$20 million
8. 9% \$20.1 million to \$50 million
9. 4% \$50.1 million to \$100 million
10. 2% Over \$100 million
11. 2% Do not have estimate → Skip to 16.

15. Which category below best describes the basis for your answer to the previous question? (Check one.)
N=352

1. 17% Pulled actual figures from accounting system or other source
2. 50% Estimated answer primarily using actual figures
3. 32% Estimated answer primarily using personal knowledge and experience
4. 1% Other (Please specify.)

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16. Considering the total costs (both cleanup costs and legal costs as reported in Question 14) spent by your corporation since January 1, 1987, for all your NPL sites, what percent were legal costs (as reported in Question 9)? (Check one.) N=363

1. 4% Less than 5 percent
2. 4% 5 to 10 percent
3. 17% 11 to 20 percent
4. 19% 21 to 30 percent
5. 13% 31 to 40 percent
6. 10% 41 to 50 percent
7. 9% 51 to 60 percent
8. 5% 61 to 70 percent
9. 5% 71 to 80 percent
10. 3% 81 to 90 percent
11. 8% Over 90 percent
12. 3% Do not have estimate

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17. In your corporation's experiences with NPL sites, how does each of the factors below affect the amount of *legal costs* your corporation incurs for NPL sites? (Check one for each row.)

| | No experience (1) | Greatly increases (2) | Moderately increases (3) | Little or no effect (4) | Moderately decreases (5) | Greatly decreases (6) |
|---|-------------------------|-----------------------------|--------------------------------|-------------------------------|--------------------------------|-----------------------------|
| A. Our corporation is the only major player at the site. N=358 | 70% | 15% | 4% | 3% | 3% | 5% |
| B. Our corporation is one of several major players at the site. N=356 | 36% | 38% | 17% | 4% | 5% | .8% |
| C. Our corporation is a minor player at the site. N=357 | 18% | 4% | 22% | 18% | 25% | 13% |
| D. Our corporation is a <u>de minimis</u> party at the site. N=358 | 10% | 3% | 13% | 16% | 24% | 34% |
| E. Municipalities are major players at the site. N=358 | 38% | 13% | 24% | 21% | 3% | .6% |
| F. Federal agencies are major players at the site. N=355 | 35% | 20% | 23% | 19% | .8% | 1% |
| G. U.S. EPA did a good job of identifying all PRPs. N=353 | 23% | .3% | 2% | 16% | 39% | 20% |
| H. U.S. EPA did a poor job of identifying all PRPs. N=354 | 16% | 49% | 28% | 6% | .6% | .3% |
| I. U.S. EPA did a good job of bringing enforcement action against all appropriate PRPs. N=355 | 30% | .6% | 4% | 12% | 35% | 18% |
| J. U.S. EPA did a poor job of bringing enforcement action against all appropriate PRPs. N=355 | 22% | 45% | 26% | 6% | .6% | .3% |
| K. U.S. EPA named all significant PRPs in a Unilateral Administrative Order (UAO). N=355 | 46% | 2% | 7% | 13% | 22% | 11% |
| L. U.S. EPA <i>did not</i> name all significant PRPs in a Unilateral Administrative Order (UAO). N=353 | 39% | 34% | 20% | 7% | .6% | .3% |

(continued on next page)

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Survey of Fortune 500 Industrial/Service
Corporations**

(continued)

| | No experience (1) | Greatly increases (2) | Moderately increases (3) | Little or no effect (4) | Moderately decreases (5) | Greatly decreases (6) |
|---|-------------------------|-----------------------------|--------------------------------|-------------------------------|--------------------------------|-----------------------------|
| M. Good volumetric information was readily available. N=357 | 15% | .6% | 2% | 10% | 42% | 30% |
| N. Good volumetric information was <i>not</i> readily available. N=355 | 14% | 43% | 35% | 6% | .8% | 0% |
| O. We used alternative methods of dispute resolution, such as mediation or arbitration. N=356 | 59% | 3% | 8% | 13% | 15% | 3% |
| P. We joined a PRP committee at the site. N=356 | 12% | 3% | 13% | 21% | 37% | 15% |
| In the following items, please consider PRPs as <i>both named and unnamed parties</i> at NPL sites. That is, the number of PRPs is the potential number, not just those originally named by U.S. EPA. | | | | | | |
| Q. The site has more than 300 PRPs. N=331 | 21% | 12% | 16% | 20% | 17% | 13% |
| R. The site has 100 to 300 PRPs. N=334 | 18% | 9% | 24% | 27% | 16% | 6% |
| S. The site has 21 to 99 PRPs. N=330 | 20% | 7% | 35% | 28% | 9% | .6% |
| T. The site has 2 to 20 PRPs. N=333 | 26% | 29% | 23% | 16% | 6% | .6% |
| U. Our corporation is the only PRP at the site. N=332 | 68% | 16% | 5% | 3% | 4% | 4% |
| V. Other (Please specify.) | | | | | | |
| W. Other (Please specify.) | | | | | | |

18. Considering the factors listed in the table above, which three are the highest generators of legal costs for your corporation's NPL sites? (Write the letters of the items in the boxes below. Use "X" if you feel there are no applicable factors.)

| | | |
|----------------------|----------------------|----------------------|
| 1st choice | 2nd choice | 3rd choice |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

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19. In your corporation's experience with NPL sites, what is the relative amount of your *legal costs* spent for each of the cleanup stages listed below? (Check one for each row.)

| Stage of cleanup | Very high costs (1) | High costs (2) | Moderate costs (3) | Low costs (4) | Very low/no costs (5) | Little/No experience (6) |
|--|------------------------|-------------------|-----------------------|------------------|--------------------------|-----------------------------|
| a. Before and during the site study N=356 | 21% | 37% | 17% | 6% | 7% | 12% |
| b. During remedy selection N=355 | 11% | 36% | 23% | 7% | 7% | 16% |
| c. During remedy design N=355 | 4% | 14% | 28% | 24% | 9% | 21% |
| d. During construction of cleanup N=356 | 2% | 7% | 15% | 30% | 15% | 30% |
| e. After construction of cleanup N=354 | .6% | 5% | 12% | 23% | 19% | 40% |

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In-house and outside legal activities

20. What is your best estimate for the total amount that your corporation has spent since January 1, 1987, for *in-house legal counsel* for resolving your corporation's responsibility for NPL sites? (Check one.) N=362

1. 22% \$25,000 or less
2. 10% \$25,001 to \$50,000
3. 9% \$50,001 to \$100,000
4. 28% \$100,001 to \$500,000
5. 11% \$500,001 to \$1 million
6. 8% \$1.1 million to \$2.5 million
7. 4% \$2.6 million to \$5 million
8. 6% \$5.1 million to \$10 million
9. 6% \$10.1 million to \$20 million
10. 0% Over \$20 million
11. 7% Do not have estimate → Skip to 22.

21. Which category below best describes the basis for your answer to the previous question? (Check one.)
N=334

1. 4% Pulled actual figures from accounting system or other source
2. 22% Estimated answer primarily using actual figures
3. 73% Estimated answer primarily using personal knowledge and experience
4. 1% Other (Please specify.)

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22. Outside counsel costs can be incurred from many sources--counsel hired solely by your corporation, shared counsel representing a group of corporations, and common counsel representing a group of PRPs. What is your best estimate for the total amount that your corporation has spent since January 1, 1987, for *outside legal counsel* for your corporation's NPL sites? Include *all* such legal costs for your corporation incurred solely or as your share of a group's costs. (Check one.)

N=362

1. 15% \$25,000 or less
2. 7% \$25,001 to \$50,000
3. 7% \$50,001 to \$100,000
4. 26% \$100,001 to \$500,000
5. 10% \$500,001 to \$1 million
6. 12% \$1.1 million to \$2.5 million
7. 9% \$2.6 million to \$5 million
8. 6% \$5.1 million to \$10 million
9. 3% \$10.1 million to \$20 million
10. 2% \$20.1 million to \$50 million
11. 3% \$50.1 million to \$100 million
12. 0% Over \$100 million
13. 1% Do not have estimate → Skip to 24.

23. Which category below best describes the basis for your answer to the previous question? (Check one.)

N=356

1. 19% Pulled actual figures from accounting system or other source
2. 43% Estimated answer primarily using actual figures
3. 37% Estimated answer primarily using personal knowledge and experience
4. 1% Other (Please specify.)

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24. Considering the total legal costs (both in-house counsel and outside counsel) incurred by your corporation for NPL sites, what percent of these legal costs were for outside legal counsel? (Check one.)
N=363

1. 6% Less than 10 percent
2. 3% 11 to 20 percent
3. 5% 21 to 30 percent
4. 6% 31 to 40 percent
5. 9% 41 to 50 percent
6. 9% 51 to 60 percent
7. 11% 61 to 70 percent
8. 14% 71 to 80 percent
9. 16% 81 to 90 percent
10. 16% Over 90 percent
11. 5% Do not have estimate → Skip to 26.

25. Which category below best describes the basis for your answer to the previous question? (Check one.)
N=342

1. 7% Pulled actual figures from accounting system or other source
2. 41% Estimated answer primarily using actual figures
3. 50% Estimated answer primarily using personal knowledge and experience
4. 1% Other (Please specify.)

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Information on your corporation

26. Which of the following best describes the type of industry in which your corporation conducts the majority of its business? (*Check one.*) N=655

1. 2% Agriculture, forestry, fisheries
2. 3% Mining, including petroleum and natural gas extraction
3. 2% Construction
4. 6% Chemical, petroleum, and rubber products
5. 32% Manufacturing, other than chemical, petroleum, and rubber products
6. 6% Transportation
7. 5% Utilities, communications
8. 7% Wholesaling, retailing
9. 18% Financial, banking
10. 9% Insurance, real estate
11. 6% Diversified services
12. 6% Other (*Please specify.*)

If your corporation has not incurred costs for any NPL sites since January 1, 1987, please return this survey in the enclosed envelope and accept our thanks for your cooperation.

Instructions for Part 2

27. For how many NPL sites has your
corporation incurred at least \$50,000 in legal
costs since January 1, 1987? (*Check one.*)
N=412

1. 35% None →

2. 3% *Cannot estimate* →

Please stop here. Do not fill out
the rest of the survey.

Thank you very much for your
assistance. Please return the
survey in the enclosed envelope.

3. 33% 1 to 3 →

4. 17% 4 to 10 →

5. 6% 11 to 20 →

6. 4% 21 to 50 →

7. 7% 51 or more →

8. 7% *At least 1; cannot estimate further* →

Please continue with **Part 2** of
the survey. Part 2 asks for
information on *three* NPL sites.
Fill out a separate section for
each site for which your
corporation incurred at least
\$50,000 in legal costs.

If your corporation incurred
\$50,000 in legal costs at *more
than three sites*, please fill out
the survey questions for the *three
most expensive NPL sites* in
terms of legal costs.

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U.S. General Accounting Office

GAO Survey of Fortune 500 Industrial/Service Corporations
Part 2: Selected NPL Sites
Site #1 (your NPL site with the highest legal costs)

Introduction

The purpose of this section of the survey is to collect information on the three sites for which your corporation has incurred the highest legal costs. You need not complete this section for sites for which you spent less than \$50,000 for legal costs. As with the rest of the survey, there is no identification of your corporation. You may choose to provide identification of each site or not, as you wish in the first question in each section.

Reminders:

This section covers the activities of your corporation at this NPL site since January 1, 1987.

Legal costs include only those legal costs related to this NPL site. Include fees charged for attorneys, paralegals, and related legal support services. Do not include technical costs billed through a law firm such as engineering studies.

Cleanup costs include all technical consultants and studies used to decide the proper cleanup for this NPL site as well as the construction and monitoring of the cleanup remedy.

PRPs are potentially responsible parties who may have to contribute to the cleanup at this NPL site. Include both named and unnamed PRPs.

28. **OPTIONAL:** What is the name and location of this NPL site?

Name of site: _____

City, state: _____

29. Which of the categories below **best** describes this site? (Check one.) N=570

1. 45% Landfill
2. 20% Recycling facility
3. 7% Other waste management facility
4. 18% Manufacturing or other industrial facility
5. 9% Other (Please specify.)
6. 0% Cannot determine

30. If this site is a landfill: What type of landfill is it? (Check one.) N=568

1. 54% Not a landfill
2. 9% Public landfill--municipal waste only
3. 26% Public landfill--municipal and industrial waste
4. 1% Industrial landfill--our corporation's waste only
5. 16% Industrial landfill--many generators' waste
6. 1% Other (Please specify.)

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31. Which *one* of the following best describes your corporation's involvement with this site? (*Check one.*)
N=569

1. 49% Expect to have significant liability at this site for a larger share of the cleanup
2. 27% Expect to have responsibility for a lesser share of the cleanup, but also expect to stay involved
3. 15% Expect to be a de minimis party
4. 5% Expect to be able to demonstrate that our corporation is not responsible for this site (but will not be a de minimis party)
5. 1% Other (*Please specify.*)
6. 2% Cannot determine at this time

32. How many parties, including your corporation, do you expect to eventually be named and/or to share liability for this site? Include all PRPs, even though some may have settled as de minimis parties. Consider both named and unnamed PRPs if you know they are potentially responsible for the site. (*Check one.*)
N=570

1. 6% 1 → Skip to 35 if your corporation is the only PRP at this site.
2. 2% 2
3. 15% 3 to 10
4. 11% 11 to 20
5. 14% 21 to 30
6. 13% 51 to 100
7. 20% 101 to 300
8. 13% 301 to 1,000
9. 3% 1,001 or more
10. 3% Do not have estimate → Skip to 35.

33. How many of the PRPs, if any, at this site are municipalities or other local governments who have responsibility because they were *owners or operators* at this site? (*Check one.*) N=528

1. 67% None
2. 14% 1
3. 2% 2
4. 3% 3 to 5
5. 6% 6 to 10
6. 2% 11 or more
7. 3% At least 1, but cannot provide estimate
8. 8% Cannot determine

34. How many of the PRPs, if any, at this site are municipalities or other local governments who have responsibility because they were either *generators or transporters*? (*Check one.*) N=526

1. 43% None
2. 7% 1
3. 11% 2 to 5
4. 8% 6 to 10
5. 10% 11 to 50
6. 1% 51 or more
7. 8% At least 1, but cannot provide estimate
8. 12% Cannot determine

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35. What is the quality of the volumetric information (for example, amount of material disposed or recycled) at this site? Please rate the quality considering how useful it is to determine the proper allocation of cleanup costs for each party. (Check one.) N=569

1. 5% Excellent
2. 23% Good
3. 23% Fair
4. 33% Poor
5. 11% No volumetric information exists for this site
→ Skip to 37.
6. 5% Cannot determine

36. What is the main source of the volumetric information for this site? (Check one.) N=524

1. 6% U.S. EPA
2. 2% Search company
3. 18% PRP group's research
4. 23% Owner/Operator records
5. 41% A combination of sources
6. 4% No volumetric information exists for this site
7. 6% Cannot determine

37. What is the current stage of cleanup for this NPL site? (Check one.) N=566

1. 1% Pre-site study
2. 12% Site study
3. 16% Remedy selection
4. 22% Remedy design
5. 29% Construction of cleanup
6. 14% Post-construction
7. 6% Uncertain

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**Please use your corporation's best available
information for the cost information requested below.
Report legal costs related only to this NPL site.**

Legal costs, for the purposes of this survey, should include
-- Costs for in-house counsel for NPL sites
-- Costs for outside counsel for NPL sites
-- Legal costs incurred through a PRP group as well as
individually by your corporation for NPL sites

38. What is your best estimate for the total amount that your corporation has spent since January 1, 1987, for matters relating to *this NPL site* for (1) outside legal counsel, and (2) in-house legal counsel? Include legal representation for your company solely or as your share of a PRP group's legal costs. (Check one for each column.)

| | (A) Outside legal costs N=567 | (B) In-house legal costs N=551 |
|-----------------------------------|--|---|
| 1. \$50,000 or less | <u>12%</u> | <u>38%</u> |
| 2. \$50,001 to \$100,000 | <u>17%</u> | <u>27%</u> |
| 3. \$100,001 to \$250,000 | <u>26%</u> | <u>18%</u> |
| 4. \$250,001 to \$500,000 | <u>15%</u> | <u>8%</u> |
| 5. \$500,001 to \$1 million | <u>15%</u> | <u>3%</u> |
| 6. \$1.1 million to \$2 million | <u>8%</u> | <u>9%</u> |
| 7. \$2.1 million to \$5 million | <u>6%</u> | <u>0%</u> |
| 8. \$5.1 million to \$10 million | <u>.5%</u> | <u>0%</u> |
| 9. \$10.1 million to \$20 million | <u>.7%</u> | <u>0%</u> |
| 10. Over \$20 million | <u>.2%</u> | <u>0%</u> |
| 11. Do not have estimate | <u>.5%</u> | <u>5%</u> |

39. Which category below best describes the basis for your answer to the previous question for outside and in-house legal costs? (Check one for each column.)

| | (A) Outside legal costs N=564 | (B) In-house legal costs N=518 |
|---|--|---|
| 1. Pulled actual figures from accounting system or other source | <u>40%</u> | <u>4%</u> |
| 2. Estimated answer primarily using actual figures | <u>38%</u> | <u>23%</u> |
| 3. Estimated answer primarily using personal knowledge and experience | <u>22%</u> | <u>72%</u> |
| 4. Other (Please specify.) | <u>.5%</u> | <u>2%</u> |

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40. What is your best estimate for the total amount that your corporation has spent since January 1, 1987, for *cleanup costs* for this NPL site? Include technical consultants and studies as well as the construction and monitoring of the cleanup remedy. Do not include legal costs reported in Question 38. (Check one.) N=568

1. 24% \$50,000 or less
2. 8% \$50,001 to \$100,000
3. 11% \$100,001 to \$250,000
4. 14% \$250,001 to \$500,000
5. 11% \$500,001 to \$1 million
6. 10% \$1.1 million to \$2 million
7. 10% \$2.1 million to \$5 million
8. 6% \$5.1 million to \$10 million
9. 3% \$10.1 million to \$20 million
10. 3% Over \$20 million
11. 1% Do not have estimate → Skip to 42.

41. Which category below best describes the basis for your answer to the previous question? (Check one.)
N=554

1. 47% Pulled actual figures from accounting system or other source
2. 37% Estimated answer primarily using actual figures
3. 16% Estimated answer primarily using personal knowledge and experience
4. .2% Other (Please specify.)

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42. Considering the total costs (both cleanup costs reported in Question 40 and legal costs reported in Question 38) spent by your corporation for this NPL site, what percent were legal costs? (*Check one.*) N=569

1. 4% Less than 5 percent
2. 7% 5 to 10 percent
3. 11% 11 to 20 percent
4. 12% 21 to 30 percent
5. 10% 31 to 40 percent
6. 10% 41 to 50 percent
7. 8% 51 to 60 percent
8. 7% 61 to 70 percent
9. 8% 71 to 80 percent
10. 5% 81 to 90 percent
11. 17% Over 90 percent
12. 1% *Do not have estimate*

43. Has your insurance carrier(s) provided legal services or reimbursement of legal costs to assist your corporation with legal needs associated with this NPL site? (*Check one.*) N=565

1. 1% Yes, provided legal services
2. 13% Yes, provided reimbursement for our legal costs
3. 7% Yes, provided *both* legal services and reimbursement
4. 81% No
5. 4% *Cannot determine*

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44. In your estimation, what portion of your company's total ultimate *legal costs* (both past and future) have *already* been incurred for this NPL site? Please include the cost of any third-party or insurance litigation. (*Check one.*) N=569

1. 29% All or nearly all
2. 33% More than half
3. 14% About half
4. 11% Between one-quarter and one-half
5. 6% Less than one-quarter
6. 6% Do not have estimate

45. What is your corporation's best estimate for the total amount that your corporation will eventually spend on *the cleanup* for this NPL site? Cleanup costs include all technical consultants and studies used to decide the proper cleanup for a site, but do not include legal costs. (*Check one.*) N=569

1. 20% \$250,000 or less
2. 23% \$250,001 to \$1 million
3. 27% \$1.1 million to \$5 million
4. 17% \$5.1 million to \$25 million
5. 3% \$25.1 million to \$50 million
6. 2% \$50.1 million to \$100 million
7. 7% Over \$100 million
8. 8% Do not have estimate

46. In your estimation, what percent of your corporation's ultimate costs (both cleanup costs and legal costs) for this NPL site will eventually be spent for *legal costs*? (*Check one.*) N=568

1. 11% Less than 10 percent
2. 22% 10 to 20 percent
3. 28% 21 to 40 percent
4. 18% 41 to 60 percent
5. 7% 61 to 80 percent
6. 8% Over 80 percent
7. 6% Do not have estimate

47. What is your best estimate for the total amount that will eventually be spent to complete the cleanup for this NPL site *by all parties*? (*Check one.*) N=568

1. 9% \$1 million or less
2. 13% \$1.1 million - \$10 million
3. 24% \$10.1 million - \$25 million
4. 22% \$25.1 million - \$50 million
5. 12% \$50.1 million - \$75 million
6. 6% \$75.1 million - \$100 million
7. 8% \$100.1 million - \$300 million
8. 5% Over \$300 million
9. 9% Do not have estimate

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48. Considering your corporation's total legal costs for this NPL site, what is the level of these costs associated with each of the activities listed below? (Check one for each row.)

| | Does not apply/ Uncertain (1) | Very High (2) | High (3) | Medium (4) | Low (5) | Very low/ None (6) |
|--|--|---------------------|-------------|---------------|------------|-----------------------------|
| A. Negotiated with your insurance carrier(s) for coverage of cleanup costs for this NPL site N=558 | 31% | 4% | 8% | 10% | 20% | 28% |
| B. Negotiated with your insurance carrier(s) for legal assistance or for reimbursement of your legal costs incurred for this NPL site N=560 | 31% | 4% | 6% | 8% | 22% | 30% |
| C. Litigated with your insurance carrier regarding coverage for this NPL site N=562 | 31% | 10% | 13% | 7% | 8% | 31% |
| D. Pursued legal actions against a municipality to obtain its cooperation for cleanup of this NPL site N=561 | 36% | 4% | 5% | 7% | 9% | 39% |
| E. Worked to identify additional parties who should share cleanup costs for this NPL site N=562 | 8% | 10% | 15% | 29% | 25% | 12% |
| F. Engaged in allocation activities including negotiating with other potentially responsible parties over each party's share of costs for NPL sites N=564 | 6% | 24% | 26% | 26% | 12% | 6% |
| G. Pursued legal actions against third parties to obtain their contributions for cleanup of this NPL site N=561 | 17% | 14% | 17% | 17% | 13% | 23% |
| H. Negotiated with U.S. EPA or another regulatory agency over remedy selection at this NPL site N=562 | 11% | 21% | 27% | 21% | 12% | 8% |
| I. Litigated with U.S. EPA or another regulatory agency over remedy selection at this NPL site N=558 | 32% | 9% | 5% | 5% | 9% | 40% |
| J. Engaged in legal actions with U.S. EPA or another regulatory agency regarding your liability for cleanup of this NPL site (either by a PRP group or by your corporation) N=562 | 23% | 14% | 9% | 10% | 11% | 33% |

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(continued)

| | <i>Does not apply/ Uncertain (1)</i> | <i>Very High (2)</i> | <i>High (3)</i> | <i>Medium (4)</i> | <i>Low (5)</i> | <i>Very low/ None (6)</i> |
|---|--|------------------------------|---------------------|-----------------------|--------------------|---------------------------------------|
| K. Negotiated with U.S. EPA or another regulatory agency regarding your liability for cleanup of this NPL site (either by a PRP group or by your corporation) N=560 | 10% | 12% | 20% | 21% | 22% | 14% |
| L. Responded to legal actions brought by PRPs trying to obtain contributions from your corporation for cleanup of this NPL site N=559 | 25% | 12% | 10% | 11% | 11% | 31% |
| M. Other (Please specify.) | | | | | | |
| N. Other (Please specify.) | | | | | | |

49. Considering the types of legal costs listed in the table above, which two account for the highest portion of your corporation's *outside legal costs* for this NPL site? (Write the letters of the items in the boxes below. Use "X" if you feel there are no applicable factors.)

1st
choice

2nd
choice

50. Considering the types of legal costs listed in the table above, which two account for the highest portion of your corporation's *in-house legal costs* for this NPL site? (Write the letters of the items in the boxes below. Use "X" if you feel there are no applicable factors.)

1st
choice

2nd
choice

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51. Below is a list of factors that can influence the amount of *legal costs* that corporations spend at NPL sites. Please indicate whether or not each of the factors applies to this NPL site. (Check one for each row.)

| In the questions below, the term <i>PRP</i> means both named and unnamed parties. | Is this true for this site? | | | |
|--|-----------------------------|----------------------|-----------------|-------------------------------------|
| | Very true (1) | Somewhat true (2) | Not true (3) | Does not apply/ Uncertain (4) |
| A. This site has a low number of PRPs, but it is likely that more will be involved. N=559 | 9% | 18% | 59% | 14% |
| B. This site has a low number of PRPs, and it is <i>not</i> likely that many more will be involved. N=560 | 26% | 12% | 50% | 12% |
| C. This site has a high number of PRPs. N=561 | 33% | 15% | 46% | 6% |
| D. Our corporation is the only major player at this site. N=559 | 10% | 5% | 75% | 10% |
| E. Our corporation is one of several major players at this site. N=559 | 34% | 20% | 38% | 8% |
| F. Our corporation is a minor player at this site. N=559 | 23% | 12% | 58% | 8% |
| G. There was a <i>de minimis</i> settlement at this site. N=555 | 24% | 9% | 53% | 14% |
| H. There have been no <i>de minimis</i> settlements at this site. N=552 | 48% | 5% | 33% | 14% |
| I. U.S. EPA did a good job of identifying all PRPs. N=560 | 9% | 31% | 45% | 15% |
| J. U.S. EPA did a poor job of identifying all PRPs. N=563 | 37% | 23% | 23% | 17% |
| K. U.S. EPA did a good job of bringing enforcement action against all appropriate PRPs. N=558 | 5% | 19% | 52% | 24% |
| L. U.S. EPA did a poor job of bringing enforcement action against all appropriate PRPs. N=559 | 41% | 19% | 14% | 27% |
| M. At least one municipality was a major player at this site. N=562 | 25% | 10% | 43% | 22% |
| N. No municipalities were major players at this site. N=561 | 43% | 4% | 34% | 20% |
| O. At least one federal agency was a major player at this NPL site. N=560 | 20% | 8% | 52% | 20% |
| P. No federal agencies were major players at this site. N=560 | 50% | 3% | 26% | 21% |

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(continued)

| | Is this true for this site? | | | |
|--|-----------------------------|----------------------|-----------------|-------------------------------------|
| | Very true (1) | Somewhat true (2) | Not true (3) | Does not apply/ Uncertain (4) |
| Q. U.S. EPA provided good volumetric information on the use of the facility by PRPs. N=561 | 5% | 23% | 57% | 15% |
| R. Good volumetric information was readily available for this site from sources other than U.S. EPA. N=560 | 10% | 33% | 45% | 12% |
| S. Good volumetric information was <i>not</i> readily available from any source for this site. N=561 | 39% | 19% | 30% | 12% |
| T. We belonged to a PRP group at this site. N=563 | 66% | 8% | 18% | 8% |
| U. We elected not to join a PRP group at this site. N=557 | 8% | 4% | 70% | 18% |
| V. We used a type of alternative dispute resolution such as mediation or arbitration at this site. N=559 | 11% | 8% | 65% | 16% |
| W. We did <i>not</i> use an alternative dispute resolution at this site. N=556 | 63% | 3% | 18% | 16% |
| Y. Other (Please specify.) | | | | |
| Z. Other (Please specify.) | | | | |

52. Considering the factors in the table above that you identified as "true" for this NPL site, which ones contribute most to **increasing** legal costs at this NPL site? (Write the letters of the items in the boxes below. Use "X" if you feel there are no applicable factors.)

| | |
|----------------------|----------------------|
| 1st choice | 2nd choice |
| <input type="text"/> | <input type="text"/> |

53. Considering the factors in the table above that you identified as "true" for this NPL site, which ones contribute most to **keeping legal costs as low as possible** at this NPL site? (Write the letters of the items in the boxes below. Use "X" if you feel there are no applicable factors.)

| | |
|----------------------|----------------------|
| 1st choice | 2nd choice |
| <input type="text"/> | <input type="text"/> |

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54. Please use this page to add any comments you wish relating to this NPL site.

(Pages 31 through 54 repeated pages 19 through 30 for Sites 2 and 3)

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